Supreme Court, U.S.
F I L E D

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term 1998

DALJIT S. JANDU

Petitioner

vs.

NATIONAL SCIENCE FOUNDATION

Respondent

On petition for Writ of Certiorari to the United States court of Appeals for the Fifth Circuit

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PETITION FOR THE WRIT OF CERTIORARI

Daljit S. Jandu
Petitioner
P.O. Box 364
Simi-Valley, CA 93065
818-980-6864

3 ORIG

QUESTION PRESENTED

Is the requirement of de novo review of the state law determinations by Federal Court under Salve Regina College v. Russell, 499 U.S. 225 (1991) satisfied when the court fails to acknowledge the applicable standard of review in it's decision, and the decision fails to reference or discuss binding or compelling authority from the state's highest court indicating that the state court would likely reach a different result ?

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the other main parties are:

Middle Tennessee State University
State of Tennessee

and

Immigration and Naturalization Service
United States of America.

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Petitioner, Daljit S. Jandu respectfully request that a writ of certiorari be issued to review the judgement of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinions of United States Court of Appeals for the Fifth Circuit in Daljit S. Jandu v. National Science Foundation No. 98-50639 (5th. Circuit February 11, 1999) is an unpublished per curiam opinion and is reproduced in the appendix to the petition (App. A). The opinion of the United States District Court for the Western District of Texas, Austin Division in Daljit S. Jandu v. Middle Tennessee State University and United States of America U.S.D.C. No. A 97 CA 660 SS is reproduced in the appendix to the petition. (App. B)

STATEMENT OF JURISDICTION

The judgement of the United States Court of Appeals for the Fifth Circuit was entered on February 11, 1999. The Court of Appeals denied a timely petition for rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Rules of Decision Act, 28 U.S.C. § 1652 ("State laws as rules of decision") provides:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide. shall be regarded as rules of action in the civil actions in the courts of United States, in cases where they apply.

STATEMENT OF THE CASE

The question presented for resolution by this petition is what does and does not satisfy the minimum standard for de novo review under Salve Regina College v. Russell, 499 U.S. 225 (1991). In order to insure that the Federal Court of Appeals were honoring their obligation under Erie R.R.Co. v. Tompkins, 304 U.S. 64 (1938) of applying the substantive law of the forum state when adjudicating state law claims, this Court in Salve Regina directed them to review de novo the state law determinations of district courts. However, the Court of Appeals failed to acknowledge that standard of review in reaching its decision in the instant case. Furthermore, the opinion lacks the careful and comprehensive review of the pertinent legal authorities of the states whose law the court purported to apply.

In Salve Regina this Court observed that "the difference between the rule of deference and the duty to exercise independent review is 'much more than a mere matter of degree.'" Id. at 238 citing Bose Corp. v. Consumers Union of United States, 466 U.S. 485 501 (1984). This maxim is sorely tested in this case, though not

so much by deference as indifference. In this instance the Court of Appeals selectively employed limited principles of the contract or tort law in order to avoid it's duty under Erie and to instead achieve the outcome it desired. In so doing, the Court of Appeals violated its obligation under 28 U.S.C.§1652 and Erie to decide the issues in this diversity action in the manner that the highest state courts would have decided the issues.

Facts Material To The Consideration Of The Question Presented.

The University or any institution of higher learning has two core functions, i.e. teaching and research. The petitioner while a faculty in Middle Tennessee State University for the academic year 1990-91, has done basic science level research work in Y2K Solution to the Computer Problem in Year 2000. The petitioner was impressed by the multitude of other applications from the same scientific basis and wanted to request National Science Foundation to provide the grants to accomplish that.

In the mean time the petitioner was given letter by the University President, Dr. Wallace Prescott (App.C). The revocation from Immigration and Naturalization Service (App.D) should not be valid in view of letter of the University President (App C)

Consequently, the petitioner claims the following relief;
Either

1) Middle Tennessee State University to pay a compensation of

6 Million Dollars to the petitioner.
and
The petitioner be provided the U.S. Citizenship from the priority date originally assigned to him.

Or

2) National Science Foundation to issue a grant up to 6 Million Dollars to the petitioner.
and
The petitioner be provided the U.S. Citizenship from priority date originally assigned to him.

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THE HOLDING IN SALVE REGINA COLLEGE v. RUSELL THEREBY CALLING FOR AN EXERCISE OF SUPREME COURT'S POWER OF SUPERVISION.

A. The letter of the University President and it's contents were ignored by the Court of Appeals;
The District Court and the Court of Appeals deliberately ignored the contents of the letter (App. C) , which has to be the decision spectrum.

B. Middle Tennessee State University precedent applicable to the contract construction was ignored by the District Court and the Court of Appeals.

CONCLUSION

As this Court observed in Salve Regina College, supra, independent appellate review necessarily entails a careful consideration of the legal analysis on the state law issues. Appellate indifference to determinations of the state law is as much inconsistent with the principles underlying this court's decision in Errie R.R. Co. v. Tompkins as is appellant deference to lower court's legal analysis. The Court of Appeals decision personifies the denial of litigants access to the meaningful review of state law claims under the federal court system. Such a lack of meaningful review " create[s] a dual system of enforcement of state-created rights, in which the substantive rule applied to the dispute may depend on the choice of forum." Salve Regina College, supra. This type of result cannot be reconciled with the command of Erie and can only be corrected by this Court's intervention.

For the reasons set forth above, the petitioner respectfully requests that it's petition for a writ of certiorari be granted.

Respectfully submitted,

DALJIT S. JANDU
P.O. Box 364
Simi-Valley, CA 93065
818-980-6864

APPENDIX A - UNPUBLISHED PER CURIAM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED FEBRUARY 11, 1999

UNPUBLISHED

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 98-50639
Conference Calender

DALJIT S. JANDU,

Plaintiff-Appellant

versus

NATIONAL SCIENCE FOUNDATION
IMMIGRATION AND NATURALIZATION SERVICE,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. A:97-CV-911

Appendix A

Before BARKSDALE and EMILO M. GARZA, Circuit Judges.*

PER CURIAM : **

Daljit Jandu appeals the district court's order dismissing his civil lawsuit premised on federal-question jurisdiction and imposing $1,000 in sanctions. Jandu, however, has not identified any error on part of the district court in his initial brief on appeal, that is, whether the district court erred either in dismissing his suit or in imposing sanctions. Jandu has presented nothing for this court to review. His appeal is frivolous and is therefore DISMISSED. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); Brinkmann v. Dallas County Deputy Sheriff Abner 813 F.2d 744, 748 (5th Cir. 1987); 5TH CIR. R. 42.2 We warn Jandu that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Jandu is cautioned to review any pending appeals to ensure that they do not raise the arguments that are frivolous. Finally, Jandu's motion to expedite his appeal and his motion for decision support are DENIED.

MOTION DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.

APPENDIX B- ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

JUDGEMENT FILED DECEMBER 3, 1997

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DALJIT S. JANDU	§
	§
	§
VS.	§
	§ **NO. A 97 CA 660 SS**
	§
UNITED STATES OF AMERICA	§
MIDDLE TENNESSEE STATE	§
UNIVERSITY	§

ORDER

BE IT REMEMBERED on this the 3 rd. day of December 1997 the court reviewed the file in the above styled cause and specifically the motion to dismiss filed by Tennessee State University [#3 filed October 21, 1997] and the response to the same pursuant to the order of this Court[#13 filed November 18, 1997], and thereafter makes the following findings and orders:

Appendix B

This lawsuit was initiated on September 5, 1997, by the plaintiff Jandu reciting a "violation of Administrative Procedures Act" by Middle Tennessee State University and naming the defendants James E. Walker, president of Middle Tennessee State University, with address of Murfreesboro, TN and Dorris Miessner, Commissioner, Immigration and Naturalization Service in Washington, D.C.. Damages were sought against Middle Tennessee State University as well as apparently some type of equitable relief for "revocation of I-140."

On October 21, 1997, the defendant Middle Tennessee State University filed a motion to dismiss based on no subject matter jurisdiction, no personal jurisdiction and improper service. On November 7, 1997, the United States of America answered alleging as defenses that the plaintiff Jandu has failed to state a claim upon which a relief could be granted and also alleging failure of subject matter jurisdiction.

On November 12, 1997, this court entered its order that the plaintiff Jandu respond to this pleadings, and a response was fled on November 18, 1997. This response like the original petition, makes little sense, but it appears that the plaintiff Jandu has some type of dispute relating to his employment in Tennessee by Middle Tennessee State University and possibly with Immigration and Naturalization Service, which in some way might relate to that employment or lack of that employment.

In any event, it is clear that the plaintiff Jandu has stated no cause of action nor any factual allegations which would sustain any subject matter jurisdiction of this Court over any dispute that he

might have in this case, and it is further clear that this Court has no personal jurisdiction over Middle Tennessee State University and that the Eleventh amendment of the Constitution of United States would prevent this court from exercising jurisdiction over a state "actor" such as Middle Tennessee State University.

With regard to the pleadings of the United States of America, there has been stated no factual allegations nor any specific cause of action which would give this court jurisdiction over the Immigration and Naturalization Service, it's commissioner, or the United States of America. Also, the plaintiff Jandu seeks no recovery against the United States of America and he has emphasized in letters to the Clerk that he is seeking damages only against Middle Tennessee State University in the amount of $6 million and will authorize the Clerk to distribute $3 million of that when he is successful.

IT IS ORDERED that the Motion to Dismiss filed by Middle Tennessee State University is GRANTED on the basis of lack of personal jurisdiction, lack of subject matter jurisdiction, and the Eleventh Amendment of the Constitution of the United States.

IT IS ORDERED that the United States of America is DISMISSED as a party Defendant for the lack of subject matter jurisdiction and no cause of Action stated against it for which any relief could be possibly granted by this Court;

IT IS FINALLY ORDERED that all cost of suit are taxed against the plaintiff Jandu for which let the execution issue.

Appendix B

SIGNED on this the *3rd (handwritten)* day of December 1997.

s/ SAM SPARKS
UNITED STATES DISTRICT JUDGE

APPENDIX C - LETTER FROM THE PRESIDENT DATED NOVEMBER 7, 1990

MIDDLE TENNESSEE STATE UNIVERSITY
Office of the President

MEMORANDUM

TO: To the Official University Records

FROM: Wallace Prescott
Interim President

SUBJECT: Scholarly Work of Mr. Daljit Jandu

DATE: November 7, 1990

TIME: 9:35 a.m.

At 9;35 a.m. on November 7, 1990 Dr. Earl Keese Dean of School of Basic and Applied Sciences, Mr. Daljit Jandu, Instructor in Industrial Studies, and Wallace Prescott, Interim President, met in the Office of the President to discuss the scholarly work of Mr. Jandu.

Dr. Keese handed back to Mr. Jandu materials that has been left with Dr. Keese. Subsequently, one copy of Research Proposal #1 (3 pages) was made and one copy of Research Proposal# 2 (2 pages) was made. These copies were deposited with Dr. Prescott and the originals (on blue paper) were returned to Mr. Jandu.

Appendix C

Research proposals (on blue paper) #3, Finite Element Methods; # M Conformal Mapping; # 4, Repeated Eigin Values; #5, Vibrations; #8, Heat Transfer, were also left with Dr. Prescott

Dr. Keese repeated that he had no interest in research proposals beyond being willing to assist Mr. Jandu in applying for university assistance for pursuing his research.

Mr. Jandu indicated that his only interest at this time is that the copies of his work reside only in the Office of the President.

The President has caused the materials to be placed in sealed envelope and placed in the industrial Studies File.

The undersigned certifies that no other copies of the materials being made and the material is sealed and filed as stated above.

s/Wallace Prescott

s/Audene Phillips

s/Carlene Henry

cc: Daljit Jandu
Dean Keese

APPENDIX D - LETTER OF AUTOMATIC REVOCATION DATED FEBRUARY 23, 1993

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Southern Service Center
P.O. Box 152122, Department A
Irving, Texas 75015-2122

NOTICE OF AUTOMATIC REVOCATION

DATE: *2-23-93 (handwritten)*

FILE NUMBER: 91 252 00021, A29 916 161

Middle Tennessee State University
c/o Richard Gould
P.O. Box 19
1500 Greenland Dr.
Murfreesboro, Tn. 37132

Dear Mr. Gould:

This notice is reference to the visa petition which was filed on August 20, 1991 at this office, in behalf of Daljit Singh Jandu. The petition was approved on August 26, 1991.

This office has received information from the American Embassy in New Delhi that the petitioner, Middle Tennessee State University, has with drawn the petition filed on behalf of Mr. Jandu.

Appendix D

In view of the foregoing, the approval of the visa petition is hereby revoked pursuant to Title 8, Code of Federal regulations, part 205.1.

Sincerely,

for
s/Olen R. Martin
Director/ 17